APPEAL NO. 021214
FILED JULY 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 18, 2002, with the record closing on May 3, 2002. The hearing officer held that the respondent (claimant) was injured in the course and scope of his employment and not in the course of a willful attempt to injure himself or others. However, the hearing officer found that the claimant did not have disability.

The appellant (carrier) appeals, arguing that the claimant was outside the course and scope of his employment when he did not vacate the employer's premises by the indicated route following his suspension, and that the great weight and preponderance of the evidence is against the conclusion that the claimant did not willfully attempt to injure himself. There is no response from the claimant. There is no appeal of the finding on the disability issue.

DECISION

We affirm the hearing officer's decision.

The claimant asserted injury from a slip and fall in the kitchen of the restaurant where he was a manager, following being placed on suspension pending investigation of sexual harassment claims. The undisputed evidence is that he was not terminated until about two weeks later. There was conflicting testimony about the circumstances of the fall, and whether the claimant understood that he was directed not to leave by the kitchen but by a side door instead. There was evidence that the door he selected was closer to the parking lot. There was evidence offered in support of the argument that the claimant's objectively diagnosed back injuries likely occurred from a severe automobile accident the year before.

An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). Although this is a case where different inferences could have been drawn from this record, we cannot agree that the hearing officer's decision is so against the great weight and preponderance of the evidence as to constitute reversible error on the issues of willful intent to injure or occurrence of an injury.

Because the claimant had not been terminated, the decisions cited by the carrier in its appeal as to course and scope are not in point on whether the injury occurred outside the course and scope of employment. The claimant remained an employee of the employer on the date of the incident, and the fact that he was leaving by another

door when asked to vacate the premises does not rise to such a violation of the workplace rules to remove him from the course and scope of employment.

We accordingly affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

_____
Philip F. O'Neill
Appeals Judge